

**CONTRACTUAL TERMS AND CONDITIONS REQUIRED BY VITA ON BEHALF OF THE
COMMONWEALTH
AS IN EFFECT THROUGH JUNE 30, 2007**

As used herein, the term "Authorized Users" shall mean all public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

1. APPLICABLE LAWS AND COURTS

This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth or in the federal court located in Richmond, Virginia. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

2. ANTI-DISCRIMINATION - §2.2-4343(1)(E) and §2.2-4311

Contractor shall conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. A Contractor which is a faith-based organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body.

In every Contract over \$10,000 the provisions in a. and b. below apply:

- a. During the performance of this Contract, the Contractor agrees as follows:
 - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except if there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

- b. The Contractor will include the provisions of (a) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

3. NONDISCRIMINATION OF CONTRACTORS - §2.2-4343.1(H)

Contractor acknowledges that if Contractor is a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

4. ETHICS IN PUBLIC CONTRACTING - §2.2-4367 et seq.

Contractor certifies that it has not committed and shall not commit any act of collusion or fraud and that it has not offered or received and shall not offer or receive any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with its offer or performance of the Contract, and that it has not conferred and shall not confer on any public employee having official responsibility for the procurement transaction resulting in this Contract or for the administration of this Contract any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was or will be exchanged.

5. IMMIGRATION REFORM AND CONTROL ACT OF 1986 – 8 USC 1324(a)

Contractor does not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

6. ANTITRUST – required by federal law

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

7. PAYMENT - §2.2-4347, §2.2-4353, and §2.2-4354

Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.

Additionally:

- a. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute.

b. To Subcontractors:

- 1) Contractor is hereby obligated:
 - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
 - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

- 2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

8. MODIFICATIONS - §2.2-4309

This Contract may be modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives authorized to do so. No modification to this contract shall be effective unless it is in writing and signed by the duly authorized representatives of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

If Contract is a firm fixed price contract, the following shall apply: Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

9. INSURANCE - §65.2-800 et seq.

Contractor shall maintain the following insurance coverages throughout the term of the Contract and any extensions thereto. All insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. A contractor who fails to notify the Commonwealth of an increase in the number of employees that changes its workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
- b. Employer's Liability - \$100,000.
- c. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

- d. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

10. DRUG-FREE WORKPLACE - §2.2-4312

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

11. NONVISUAL ACCESS TO TECHNOLOGY and Section 508 Compliance: §2.2-3500 - §2.2-3504

All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Contract:

- (i) Effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) The Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- (iii) Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the Code of Virginia.

“All information technology which, pursuant to this Contract, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the “Technology”) shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia.”

12. MINIMUM INDEMNIFICATION OBLIGATIONS

Contractor shall, at a minimum, indemnify, defend, and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents, and employees (“Commonwealth’s Indemnified Parties”) from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys’ and accountants’ fees and disbursements) and costs (each, a “Claim” and collectively, “Claims”), incurred by, borne by or asserted against any of Commonwealth’s Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from any actual or alleged infringement or misappropriation of any third party’s intellectual property rights by any of the products, services, software, or data provided by Contractor pursuant to the Contract. Contractor’s liability with respect to its indemnification obligations shall not be limited.

The above paragraph contains the minimum indemnification obligations of Contractor. Nothing contained in the above paragraph shall be construed as restricting the right of the Commonwealth, VITA or any Authorized User to place additional indemnification obligations on Contractor or as limiting the indemnification obligations set forth in any contract.

13. LIABILITY

Contractor’s liability for claims for death, personal injury, and tangible property damage arising out of, resulting from, or in any way related to Contractor’s intentional or willful misconduct or negligence shall not be limited. In addition, Contractor shall indemnify, defend, and hold harmless the Commonwealth, VITA, any Authorized User, their officers, directors, agents, and employees from and against any Claim by a third party related to, arising out of, or resulting from such intentional or willful misconduct or negligence.

The above paragraph contains the minimum liability of Contractor. Nothing contained in the above paragraph shall be construed as restricting the right of the Commonwealth, VITA or any Authorized User to place additional liability requirements on Contractor or as limiting Contractor's liability with respect to any other claims.

14. NO INDEMNIFICATION OBLIGATION OF THE AUTHORIZED USER

Notwithstanding any provision in the Contract or in any order issued thereunder, neither the Commonwealth, nor VITA nor any Authorized User shall be obligated to indemnify, defend, or hold harmless Contractor, its officers, directors, agents, or employees from or against any third party claim, demand, proceeding, suit or action.